

IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH, COURT III

IA. No. 1656/2023

In
CP(IB)No.2660/MB/C-III/2018

*Application filed under section 60(5) of Insolvency and
Bankruptcy Code, 2016 r/w Regulation 45(3)(a) of the
IBBI (Liquidation Process) Regulations, 2016.*

Mr. Shailesh Bhalchandra Desai, Liquidator
(Liquidator of EMI Transmission Limited)

...Applicant

In the matter of

Dena Bank

...Financial Creditor

Vs

EMI Transmission Limited

...Corporate Debtor

Order Pronounced on: 15.05.2024

CORAM:

**SHRI CHARANJEET SINGH GULATI
HON'BLE MEMBER (T)**

**SMT LAKSHMI GURUNG
HON'BLE MEMBER (J)**

Appearances:

For the Applicant : Adv. Mitali Bhatt a/w. Adv. Ayush Rajani i/b. AKR Legal

ORDER

Per- Charanjeet Singh Gulati, Member Technical

1. It is an application filed under section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 (“IBC”) r/w Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016, by Mr. Shailesh Bhalchandra Desai, Liquidator of EMI Transmission Limited (“Corporate Debtor”) seeking following reliefs:
 - a. *Consider and allow this IA /1656/2023 in terms of Section 60(5) r/w Regulation 45(3)(a) of the IBBI (Liquidation Process) Regulations, 2016 directing the closure of the liquidation process of the Corporate Debtor, EMI Transmission Limited;*
 - b. *Discharge Mr. Shailesh Bhalchandra Desai as the Liquidator of the Corporate Debtor in terms of the provisions of the Code;*
 - c. *Direct the Registry to send the order that may be issued by this Hon’ble Adjudicating Authority in the present application to the Registrar of Companies, Mumbai with which the Corporate Debtor, EMI Transmission Limited, is registered;*
 - d. *Complete any pending activity of handover if any, or any unexpected legal formalities if any within 15 days of this order.*
 - e. *Allow and authorise the Liquidator to operate only the Liquidation bank account so as to make distribution of in case of any funds received from any of Avoidance Applications filed before Hon’ble Adjudicating Authority and from Recovery from the fraudulent transaction effected in Bank of Baroda.*
 - f. *Allow an extension of the liquidation period of the Corporate Debtor until the final order in the present application is published.*
 - g. *Authorise SCC members with Bank of Baroda being a lead bank to represent on behalf of stakeholders in all the applications filed by the Liquidator under Section 43-66 of the Code;*

- h. *Allow the liquidator to destroy all physical copies of the documents and records pertaining to the Corporate Debtor after eight years or on completion of the cases pending whichever is later, and in case storage of the documents and records is required beyond the period of eight years, direct payment of the same by Bank of Baroda;*
- i. *Pass any other such order(s) as this Hon'ble Adjudicating Authority may deem fit and proper in the facts and circumstances of this case.*

2. The Petition (CP(IB)2660(MB)/2018) was admitted by this Tribunal on 11.04.2019 and CIRP of Corporate Debtor was initiated. Mr. Shailesh Bhalchandra Desai/Applicant was appointed as an Interim Resolution Professional and subsequently, in the first CoC meeting was confirmed as a Resolution Professional.
3. The CoC in their 10th meeting held on 02.01.2020 and consequent e-voting concluded on 06.01.2020 rejected the Resolution Plan by 100% votes. Since the Resolution Plan failed to receive a vote of 66%, Resolution Professional has filed Liquidation Application MA No. 307/2020 u/s 33 of the Code, same was heard on various dates and on 14.08.2020, the Liquidation Order was passed by this Tribunal and the Applicant was appointed as Liquidator.
4. The Applicant has made a public announcement on 19.08.2020 in Form B of Schedule II as per Regulation 12 of Liquidation Regulations, 2016, towards calling for submission of claims from all the stakeholders.
5. The Applicant has received claims from the creditors. The Applicant has verified the claims based on the supporting documents/information provided by the stakeholder and thus has filed a list of stakeholders before this Tribunal on 09.10.2020, in line with Regulation 31 of IBBI (Liquidation Process) Regulations, 2016. List of Stakeholders is as follows:

Sr. no.	Creditors	Category	%
1	Bank of Baroda	Secured FC	68.42%

2	Union Bank of India	Secured FC	16.61%
3	Standard Chartered Bank	Secured FC	2.78%
4	HDFC Bank	Secured FC	1.62%
5	Mr. Sanjiv Sheth	Unsecured FC	0%
6	Ms. Nalini Menon	Rep. of Workmen & Employee	0.06%
7	GST Department		7.73%
8	Godavari Alloys	Rep. of OC	2.79%

6. The Applicant constituted the stakeholder’s consultation committee (“SCC”) in terms of Regulation 31A of the Liquidation Process Regulation.
7. The Applicant conducted Thirty-Four e-auction process from 19.10.2020 to 19.10.2022 with “**AS IS WHERE IS BASIS**”, “**AS IS WHAT IS**” AND “**WHATEVER THERE IS BASIS**” AND “**NO RECOURSE BASIS**”. The mode of sale of assets was in accordance with Schedule - I, under Regulation 33 of the IBBI (Liquidation Process) Regulations, 2016.
8. During the SCC meeting, the Applicant informed the SCC members that as per Regulation 32 of Liquidation Regulations, 2016, sale of the Corporate Debtor as a going concern. A public announcement was given in the newspaper namely Business Standard (Mumbai edition - English) and Navshakti (Mumbai edition - Marathi) for sale of Corporate Debtor as going concern along with remaining assets. The 34th E-auction Process was scheduled for 14.11.2022, however due to certain technical difficulty it was extended till 15.11.2022.
9. The Applicant submits that below mentioned assets were put under Sale:

Lot	Description	Reserve Price (Rs.)	EMD Amount (Rs.)
Lot 1	All the present assets of the Company, on a Going Concern Basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016	5.00 Crores	0.50 Crores

10. The Applicant submits that he has received the highest bids from L7 Hitech Private Limited and was considered as Successful Bidder to buy the Corporate Debtor as a going concern along with the remaining assets of Corporate Debtor. The Applicant has received the entire amount of sale consideration of Rs. 6.60 Crores, a sale certificate dated 18.11.2022 was also issued to the successful bidder. The E-auction result is as follows:

Lot	No of EMD's received	Reserve Price	Final Sale Price (Excl of taxes)	Successful Bidder	Total Recovery (Excl of taxes)
Lot 1	3	5.00 Crores	6.60 Crores	L7 Hitech Private Limited	6.60 Crores

11. On 13.04.2023, the Applicant issued a letter to L7 Hitech Private Limited / Successful Bidder confirming the full and final handover of the Corporate Debtor and its charge, properties, receipt of all papers, proceedings etc.

12. On 17.01.2023, L7 Hitech Private Limited/ Successful bidder filed an Interlocutory Application 315 of 2023 before this Tribunal, seeking certain directions, reliefs, concessions and necessary approvals for effectuating the transfer of the Auction Assets in favour of L7 Hitech Private Limited as the Successful Bidder. The said IA No. 315 of 2023 was disposed of by this Tribunal vide order dated 08.12.2023.

13. The Applicant submits that during 6th SCC meeting held on 10.03.2023, the SCC members have finalized that the applications filed by the Applicant for avoidance transaction will be pursued by the SCC members with Bank of Baroda being a lead bank. The list of pending avoidance applications as under:

- i. IA/1315/2020
- ii. IA/1310/2020
- iii. IA/1548/2020
- iv. IA/1757/2020

- v. IA/352/2021
- vi. IA/355/2021
- vii. IA/380/2021
- viii. IA/1359/2021
- ix. IA/1629/2021
- x. IA/177/2022

14. The Applicant submits that the liquidation costs has exceeded the estimated liquidation cost provided for in the preliminary report on account of running of liquidation process by more than 30 months instead of 1 year against which the liquidation cost estimated.

15. Further, in compliance of the Regulation 45(3)(a) of the Liquidation Process Regulations, the Applicant has filed the present Application for closure of the liquidation process of the Corporate Debtor under Regulation 45 (3)(a) of the Liquidation Process Regulations. The Applicant has also filed the final report and the compliance certificate in Form H before this Tribunal.

16. The details of the assets as per Asset Memorandum and Final Sale Report are as under:

Sr. No.	Assets	Mode of Sale	Estimated Liquidation Value (INR)	Realisation Amount (INR)	Date of Transfer to Liquidation Account
1	Recovery from Account of BoB		0	4,02,228	02.09.2020
2	Recovery pursuant to the filing of application u/s. 43 of the Code against Mr. Nitin Dholakia		2,65,00,000	2,65,00,000	21.09.2020
3	Recovery from Current Account of HDFC		11,57,900	11,57,900	20.10.2020
4	Recovery from Current Account of UBI		2,02,000	2,02,000	29.10.2020
5	GST Credit available forming		28,60,776	28,60,776	

	part of liquidator estate				
6	GST Refund		31,13,773	31,13,773	12.11.2020
7	Hyundai Xcent 1.2 VTVTS- Regn- MH-15-ES-9966	E-Auction	2,44,826	4,33,044	From 17.11.2020 to 27.11.2020
8	Maruti Vitara Brezza ZDI Plus MH-15-FN-566	E Auction	3,76,210	7,77,017	From 17.11.2020 to 27.11.2020
9	6 Residential Plots each 1,200 Sq Ft. Project "Humdevanagiri" – Site No. 110, 111, 112, 131, 132 & 133 at Gowdasandra Village, Kasara Hobili, Gauribidanur Taluk, Karnataka	E Auction	19,93,748	28,50,000	From 17.11.2020 to 27.11.2020
10	Recovery from Debtors (Power Grid Corporation)	E Auction	15,70,615	15,70,615	08.12.2020 & 16.12.2020
11	Recovery from Debtors (Adani Transmission India Limited)		19,92,797	19,92,797	09.02.2021
12	Agricultural Land at Survey No. 160; Area 18000 sqmt	Private Sale	1,76,40,000	1,51,00,000	From 22.03.2021 to 18.06.2021
13	Recovery from Kalpataru Power Transmission towards wrongful invocation of BG in liquidation period			53,83,244	16.06.2021
14	Sale of Shares of Bank of Baroda & Indian Bank	Stock Exchange	5,28,241	10,33,331	19.06.2021
15	Non Agricultural land at Survey No. 157/2/2; Area 9275 sqmt	E Auction	2,83,74,500	2,00,00,000	19.07.2021, 23.07.2021 & 26.07.2021
16	Recovery from KEC International Limited towards wrongful			1,83,90,060	22.11.2021

	invocation of BG in CIRP				
17	Maruti Ertiga VXI BSIV- MH-15-EX-3729	E Auction	2,79,595	5,93,186	04.10.2021 & 08.10.2021
18	Non-Agricultural land; Building thereupon and Machinery installed therein on survey No. 157/1+2/1; 157/2/2; 158/2 in Village Bramhanwade, Shinde- Naigaon Road, Taluka- Sinnar, District- Nashik, Maharashtra	E-Auction	11,01,68,065	27,73,07,483	From 02.02.2022 to 29.03.2022
19	Office premises with furniture and equipment's along with 10 car parking slots situated at Centre Point, CTS no. 107, Unit No.101, 1 st Floor, Dr. B. A. Road, Parel, Mumbai-400012	E Auction	21,76,66,230	16,50,00,000	From 02.02.2022 to 29.03.2022
20	Nashik Factory Electricity Security Deposit		15,73,600	15,73,600	04.05.2022
21	Misc. Scrap Sale at Nashik & Parel Premises			84,998	17.05.2022
22	Machines of the CD	E auction	10,62,04,327	2,19,82,174	From 21.12.2020 to 22.01.2021
23	Machines of the CD			1,93,07,470	From 13.01.2021 to 19.01.2021
24	Machines of the CD			74,57,289	From 10.02.2021 to 17.02.2021

25	Machines of the CD			49,30,195	From 15.03.2021 to 30.03.2021
26	Machines of the CD	Private Sale		23,73,579	22.03.2021 & 25.03.2021
27	Machinery at Survey No. 157/1; 157/2/1; 157/2/2	E-Auction		66,14,608	21.06.2021 & 25.06.2021
28	Consumables	Private Sale		8,14,811	12.02.2021
29	Sale of the Scrap	E- Auction	1,51,20,896	7,46,31,808	17.11.2020 to 30.12.2020
30	Sale of the Scrap	E- Auction		85,76,245	22.01.2021 to 28.01.2021
31	Sale of the Scrap	E-Auction		1,22,11,392	28.01.2021 to 09.02.2021
32	Sale of Scrap and forklift trucks	E-Auction		48,78,647	05.02.2021 to 13.02.2021
33	Sale of the Scrap	E-Auction		1,54,32,080	17.02.2021 to 28.03.2021
34	Scrap & Machines	E-Auction		1,19,38,358	22.03.2021 to 18.06.2021
35	Private Sale of Scrap	Private Sale		9,53,440	07.09.2021 to 09.09.2021
36	All the remaining assets of the Company, on a going concern basis as per Regulation 32A of IBBI (Liquidation Process) Regulations, 2016	E-Auction	0	6,60,00,000	03.10.2022 to 16.11.2022
		Total		80,44,28,148	

17. Certain discrepancies in amounts were noted in Form H, and clarification were sought for the same vide order dated 15.04.2024. In compliance with the said order, the Applicant filed an additional affidavit dated 30.04.2024 and has presented clarification chart, which is reproduced below:

Sr. No	Date	Bank of Baroda (Rs.)	Union Bank of India (Rs.)	Standard Chartered Bank (Rs.)	HDFC Bank (Rs.)	Total Distribution (Rs.)
1.	09.10.20	2,06,39,674	50,22,261	8,38,065		2,65,00,000
2.	13.11.20	22,66,446	5,51,495	92,028		29,09,969
3.	30.12.20	6,29,92,282	1,52,93,512	25,57,774		8,08,43,568
4.	30.12.20	11,57,042	-	-		11,57,042
5.	01.02.21	1,80,06,283	43,71,636	7,31,137		2,31,09,056
6.	24.02.21	2,31,19,096	56,12,944	9,38,741		2,96,70,781
7.	31.03.21	89,60,654	21,75,503	3,63,843		1,15,00,000
8.	30.04.21	1,48,94,927	36,16,249	6,04,802		1,91,15,978
9.	29.06.21	71,24,859	15,44,563	3,16,386		89,85,808
10.	27.07.21	1,33,18,945	32,33,625	5,40,810		1,70,93,380
11.	24.09.21	1,16,87,810	28,37,612	4,74,578		1,50,00,000
12.	28.03.22	20,68,40,780	5,03,65,801	84,23,463		26,56,30,044
13.	26.12.22	4,53,24,240	1,10,36,468	18,45,802		5,82,06,510
14.	28.03.23	31,05,531	7,56,198	1,26,471		39,88,200
15.	09.03.22				1,15,00,000	1,15,00,000
16.					14,85,00,000	14,85,00,000
	Total	43,94,38,569	10,64,17,867	1,78,53,900	16,00,00,000	72,37,10,336

18. We observe that the Corporate Debtor has been sold to L7 Hitech Private Limited as a going concern, the entire sale consideration has been received. The same has been distributed among the stakeholders in accordance with the provisions of Section 53 of the Code, read with Regulation 42 of the Liquidation Process Regulations. The Chart in paragraph 16 of this order does not reflect the opening balance. Further, the aforementioned chart at para 17, clarifies the distribution to the secured creditors, with an amount of Rs. 72,37,10,336 being distributed to them.

19. Provident Fund dues amounting to Rs. 6,67,484 have been paid in full, as evident from the Statement of Receipt and Payments, 2021. Furthermore, workmen dues (Rs. 5,67,630) have been paid, as per the Statement of Receipt and Payments of 2022 attached to the present application. Moreover, the closing balance remaining in the bank account is Rs. 14,01,548 as seen from the Statement of Receipt and Payments, 2023. From the statement of Receipts and Payment for the years ended on 31.03.2021, 31.03.2022 and 31.03.2023 it is seen the liquidation costs have been incurred as under:

Sr. No.	Year	Liquidation Cost (in Rs.)
1.	2021	4,39,13,540
2.	2022	3,20,68,152
3.	2023	47,25,188
	Total	8,07,06,880

20. Furthermore, regarding the operation of Bank Account, the Applicant has submitted in their additional affidavit that after settling the current liquidation expenses (till the date of issuance of closure order) and transferring the balance amount to the secured creditors, the specified/Liquidation account will be closed. Following this, the lender will proceed with the avoidance application, and any recovered amount will be deposited according to the lender's designated account.

21. In view of the aforesaid facts, we are of the considered opinion that this is a fit case for the closure of the liquidation process of the Corporate Debtor. Accordingly, we hereby order the closure of the liquidation process of the Corporate Debtor i.e. **EMI Transmission Limited**. Mr. Shailesh Bhalchandra Desai Applicant/Liquidator has been discharged from the date of this order.

22. Further, Bank of Baroda has been authorised to represent on behalf of stakeholders in all the application filed by the Liquidator under Section 43 and 66 of the Code.

23. Registry is directed to communicate this Order to the Registrar of Companies, Mumbai and to the Insolvency and Bankruptcy Board of India;

24. The **IA-1656/2023** filed by the RP for the closure of the liquidation process of the Corporate Debtor stands **allowed**.

Sd/-

**CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)**

Sd/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**

Arpan, LRA